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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,604	04/14/2004	Gilles Arnaud	0595-1002	5080

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EXAMINER

ELDRED, JOHN W

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 08/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/823,604	ARNAUD, GILLES	
	Examiner	Art Unit	
	J. Woodrow Eldred	3641	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 4 and 6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, and 7-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant's election without traverse of Species II, claims 1-3, 5, 7-11, in the reply filed on 12-28-05 is acknowledged.

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-3, 5, and 7-11 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-21 of U.S. Patent No. 10/823,582.

Although the conflicting claims are not identical, they are not patentably distinct from each other

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because substantially the same potentially patentable subject matter is being claimed. The present application fails to specify that the claimed rotary flap is installed to rotate within an airfoil, or that there is a small space between the flap and the airfoil. Official Notice is taken that it is notoriously well known to mount such flaps in an airfoil and that there must be clearance between the elements in order for the flap to be able to rotate. The particular claimed range of small clearance distance does not appear to present any patentable or unexpected results and is considered to have been an obvious matter of engineering choice, to provide a desired performance, to one having ordinary skill in the art.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 5, 7, 8, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dornier (2,152,033).

Dornier discloses a flap 2 with all claimed elements, including inner and outer surfaces, a rounded leading edge, a trailing edge, and an axis of rotation near the leading edge. The patent fails to specify the particular parameters of flap, but the drawing clearly shows the outer and inner surfaces to be convex and appears to show the claimed trailing edge angle and chord position of the axis of rotation. In any case, in view of the disclosure of Dornier, it is considered obvious to one having ordinary skill in the art to choose specific design parameter (for the unspecified parameters) and, lacking any indication of unexpected results, having concave surfaces, trailing edge angle, and axis of rotation as claimed is considered to have been obvious to one having ordinary skill in the art.

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6. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dornier (2,152,033) as applied to claims 1, 5, 7, 8, and 11 above, and further in view of Green (5,374,162).

Dornier fails to specify that the leading edge is elliptical. Green teaches that it is known to have elliptical leading edges on airfoils. See column 5, lines 18-22. Motivation to combine is the teaching that airfoils can have either circular or elliptical leading edges and, thus, the ability to choose the desired configuration for a particular desired result. To employ the teachings of Green on the flap of Dornier and have the leading edge be elliptical is considered to have been obvious to one having ordinary skill in the art.

7. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dornier (2,152,033) as applied to claims 1, 5, 7, 8, and 11 above, and further in view of Carter Jr. et al (2002/0005458).

Dornier fails to specify that the trailing edge is elliptical. Carter Jr. et al teach that it is known to have elliptical trailing edges on airfoils. See paragraph 21. Motivation to combine is the teaching that elliptical trailing edge can have desired performance characteristics. To employ the teachings of Carter Jr. et al on the flap of Dornier and have the trailing edge be elliptical is considered to have been obvious to one having ordinary skill in the art.

8. Applicant's arguments filed 6-6-06 have been fully considered but they are not persuasive. Applicant's argument concerning the drawings is partially correct, in that most patent drawings cannot be used anticipate particular parameters (unless specifically described) but the Examiner did not do so in the rejections (i.e. no 102 rejection was made). The drawings can be relied upon to provide teachings for what would be obvious. Clearly, if a drawing, even in schematic or non-detailed form, actually shows a particular shape or parameter, then a presumption can be made that such a structure is at least possible within the scope of the prior art and, in context with the entire remainder of the prior art and state of the particular field, can easily render particular shapes, parameters, or other structural features obvious. Such is the case here. The convexity of the flap is considered to be obvious, especially since it is simple for a drawing to render a straight line or a curved one and such a clear teaching must be given more

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weight than a more subtle parameter would be given. Rejections are routinely made based on particular shapes shown by patent drawings. Likewise, the other claimed parameters of the flap are considered to be obvious to one having ordinary skill in the art while considering the teachings of Dornier and knowing that it is a matter of ordinary engineering skill to adjust such parameters to provide desired performance. Applicant's argument that the features produce unexpected results is not persuasive because there is no basis for that allegation. The claim that the hinge moment is "greatly reduced" is a "relative" result that has no factual basis of comparison. It especially does not appear unexpected given the rather broad ranges being claimed for both the trailing edge angle and the location of the axis of rotation. The claim language does not support the idea that there is some critical combination that will give unexpected results, instead it allows broad ranges in a plurality of parameters, just as one of ordinary skill in the art would anticipate that the particular parameters of the flap could be adjusted to provide optimum performance for a particular situation. The other features addressed in the rejection are also considered to be obvious modifications without unexpected results.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

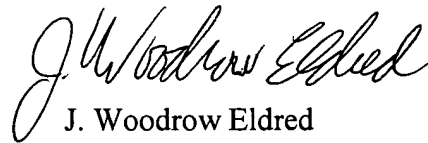
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Woodrow Eldred whose telephone number is 571-272-6901. The examiner can normally be reached on Monday to Thursday, from 8:00 a.m. to 5:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571-272-6873. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



J. Woodrow Eldred
Primary Examiner
Art Unit 3641

JWE